

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DISTRICT OF COLUMBIA,
a municipal corporation,
441 4th Street, N.W.,
Washington, D.C. 20001,

Plaintiff,

v.

CVS CORPORATION,
a Delaware corporation,
One CVS Drive,
Woonsocket, RI 02895,

MACARTHUR BOULEVARD CVS, INC.,
a District of Columbia corporation,
Registered Office:
1025 Vermont Avenue, N.W.
Washington, DC 20005,

and

ANCHOR PHARMACIES, INC.,
a Maryland corporation,
1516 Miller Road,
Westminster, MD 21158

Defendants.

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Civil Action No. _____

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Judge _____

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Calendar No. _____

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COMPLAINT

The District of Columbia, through its Corporation Counsel, brings this antitrust enforcement action as *parens patriae* to remedy the harm caused to competition by CVS Corporation's acquisition and closing of the neighborhood pharmacy ("Anchor Pharmacy")

formerly located at 4883 MacArthur Boulevard, N.W., Washington, D.C. The acquisition and closing were pursuant to agreements between CVS Corporation through its wholly-owned subsidiary MacArthur Boulevard CVS, Inc., Anchor Pharmacies, Inc. (former owner of the Anchor Pharmacy), and other persons. Since the closing, CVS Corporation has been the owner of the only remaining retail pharmacy in the District of Columbia neighborhood that was formerly served by Anchor Pharmacy.

JURISDICTION

1. This Court has jurisdiction over the subject matter of this case pursuant to D.C. Official Code § 11-921 (2001). This action is brought by the District of Columbia as *parens patriae*, through its Office of the Corporation Counsel, pursuant to the District of Columbia Antitrust Act ("Antitrust Act"), D.C. Official Code § 28-4508 (2001). The action seeks equitable relief for harm to competition caused by a contract, combination, or conspiracy in restraint of trade or commerce, all or part of which is within the District of Columbia, in violation of D.C. Official Code § 28-4502 (2001), and by the monopolization or attempted monopolization of trade or commerce, all or part of which is within the District of Columbia, in violation of D.C. Official Code § 28-4503 (2001). This Court has personal jurisdiction over the Defendants pursuant to D.C. Official Code § 13-423(a) (2001).

THE PARTIES

2. Plaintiff District of Columbia, a municipal corporation empowered to sue and be sued, is the local government for the territory constituting the permanent seat of the government of the United States.

3. Defendant CVS Corporation is organized and doing business under the laws of the State of Delaware, with its office and principal place of business located at One CVS Drive, Woonsocket, Rhode Island 02895. Since 1997, CVS Corporation, through its wholly-owned subsidiary MacArthur Boulevard CVS, Inc., has owned and operated a neighborhood pharmacy at 4859 MacArthur Boulevard, N.W., Washington, D.C. ("CVS MacArthur Boulevard Pharmacy"). In addition, CVS owns and operates more than 40 other retail pharmacies in the District of Columbia.

4. Defendant MacArthur Boulevard CVS, Inc. is a wholly-owned subsidiary of Defendant CVS Corporation. Defendant MacArthur Boulevard CVS, Inc. is a District of Columbia Corporation with a Registered Office at 1025 Vermont Avenue, N.W., Washington, D.C. Defendant MacArthur Boulevard CVS, Inc. is a party to the "Asset Purchase and Sale Agreement," dated March 18, 2002, and other agreements alleged in this Complaint.

5. Anchor Pharmacies, Inc. is a corporation organized and doing business under the laws of the state of Maryland, with its office and principal place of business located at 1516 Miller Road, Westminster, Maryland 21158. Prior to March 2002, Anchor Pharmacies, Inc. owned and operated the Anchor Pharmacy at 4883 MacArthur Boulevard, N.W., Washington, D.C.

THE TRANSACTION

6. On approximately March 26, 2002, CVS Corporation acquired the Anchor Pharmacy pursuant to the following agreements, among others:

(a) an "Asset Purchase and Sale Agreement," dated March 18, 2002, between

MacArthur Boulevard CVS, Inc. and Anchor Pharmacies, Inc., including a "non-competition covenant," which among other things prevents Anchor Pharmacies, Inc. for a three year period from opening a new retail pharmacy within a three-mile radius of the Anchor Pharmacy location; and

(b) an "agreement not to compete," dated March 7, 2002, between MacArthur Boulevard CVS, Inc. and Roy Goldstone, the pharmacist who managed Anchor Pharmacy, which among other things prevents Goldstone for a two-year period from working with a competing retail pharmacy within a three-mile radius of the Anchor Pharmacy location.

7. Shortly after the CVS Corporation acquired the Anchor Pharmacy on MacArthur Boulevard, the CVS Corporation closed the Anchor Pharmacy and posted a sign advising former Anchor Pharmacy customers that their prescriptions would be serviced at the CVS MacArthur Boulevard Pharmacy.

THE RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

8. Retail pharmacy products and services provided to individual consumers, including prescription medications and devices and ancillary products and services, such as pharmacist advice and home delivery, constitute the *relevant product market* for evaluating the competitive effects of the acquisition and closure of the Anchor Pharmacy. The *relevant geographic market* for evaluating the competitive effects of the acquisition and closure is the residential District of Columbia neighborhood from which the Anchor Pharmacy and the CVS MacArthur Boulevard Pharmacy have drawn most of their customers. The relevant geographic market is an irregularly shaped area that includes the Anchor Pharmacy location, the shape being

dependent on available routes for consumer travel. Approximate boundaries are the Maryland border (between the Potomac River and Massachusetts Avenue, N.W.), Massachusetts Avenue, N.W., Archbold Glover Park, and the Potomac River. Individual consumers residing within the relevant geographic market are subject to any higher prices or poorer service resulting from reduced competition in the relevant product and geographic markets. (The relevant product and geographic markets may differ from the product and geographic markets in which third-party payors, such as insurance companies, seek to negotiate the prices that they will pay for prescription medications and devices on behalf of subscribers and beneficiaries. Prices of prescription medications and devices to third-party payors and their subscribers and beneficiaries may typically follow the terms of contracts covering geographic areas larger than any particular neighborhood.)

COUNT I

9. Plaintiff re-alleges Paragraphs 1 through 8 and incorporates them herein by reference.

10. Defendants entered into a contract, combination, or conspiracy in restraint of trade or commerce, in violation of the District of Columbia Antitrust Act, D.C. Official Code § 28-4502 (2001).

COUNT II

11. Plaintiff re-alleges Paragraphs 1 through 8 and incorporates them herein by reference.

12. Defendants monopolized or attempted to monopolize trade or commerce, in violation of the District of Columbia Antitrust Act, D.C. Official Code § 28-4503 (2001).

HARM TO COMPETITION

13. The acquisition and closing of the Anchor Pharmacy has left CVS Corporation as the owner and operator of the only remaining retail pharmacy in the relevant geographic market.

14. The acquisition and closing of the Anchor Pharmacy permits CVS Corporation profitably to raise the prices for, or to reduce the quality of, retail pharmacy products and services, including prescription medications and devices and ancillary products and services, such as pharmacist advice and neighborhood delivery, sold to individual consumers in the relevant geographic market. Consumers are at risk of substantial harm because CVS Corporation can profitably choose to reduce service or increase prices.

15. Injunctive relief is necessary to protect consumers from the effects of Defendants' violations of the District of Columbia Antitrust Act.

PRAYER FOR RELIEF

WHEREFORE Plaintiff, pursuant to the District of Columbia Antitrust Act and the Court's own equitable powers, requests that this Court:

1. Declare that Defendants' actions in agreeing to transfer the Anchor Pharmacy to CVS Corporation and in closing the Anchor Pharmacy were in violation of the District of Columbia Antitrust Act, D.C. Official Code §§ 28-4502 and 28-4503 (2001);

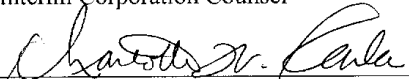
2. Enter an injunction

(a) requiring Defendants to take steps to restore competition as it was prior to Defendants' violations, including, but not limited to, requiring Defendants to facilitate, and provide monetary incentives sufficient to induce, the opening of a competing retail pharmacy, comparable to the former Anchor Pharmacy, in the


- relevant geographic market; and
- (b) requiring Defendant CVS Corporation to provide the Office of the Corporation Counsel of the District of Columbia with two months' notice prior to any future acquisition of any existing retail pharmacy in the District of Columbia;
3. Award Plaintiff the costs of this suit, including reasonable attorney's fees;
4. Retain jurisdiction of this matter for purposes of monitoring and enforcing Defendants' compliance with the injunction entered by the Court;
5. Order such additional equitable relief as the Court may determine to be just and proper.

Respectfully submitted,

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DATED: May 30, 2003.